APPEAL NO. 030438
FILED MARCH 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on January 23, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the date of injury under Section 408.007 was _____; and that the respondent (self-insured) is relieved of liability under Section 409.002 because of the claimant's failure to timely notify the self-insured of her claimed injury pursuant to Section 409.001. The claimant appealed the hearing officer's determinations on sufficiency of the evidence grounds. The self-insured responded urging affirmance.

DECISION

Affirmed.

The claimant attached to her appeal a letter from her current treating doctor dated February 13, 2003, that was not offered at the CCH. Section 410.203(a) provides that the Appeals Panel shall consider the record developed at the CCH. In Jackson v. Van Winkle, 660 S.W.2d 807 (Tex. 1983), the court stated that it is incumbent upon a party who seeks a new trial on the ground of newly discovered evidence to satisfy the court that the evidence has come to his knowledge since the trial; that it was not owing to the want of due diligence that it did not come sooner; that it is not cumulative; and that it is so material that it would probably produce a different result if a new trial were granted. The letter attached to the appeal could have been secured through due diligence prior to the CCH since the claimant began treatment with her current treating doctor in November 2001. Consequently, we will not consider it for the first time on appeal.

The claimant had the burden to prove that she sustained a compensable injury. The claimant contended that she sustained a repetitive trauma injury, which is defined in Section 401.011(36) as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determination that the claimant did not sustain a repetitive trauma injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

An occupational disease includes a repetitive trauma injury. Section 401.011(34). Section 408.007 provides that the date of injury for an occupational

disease is the date on which the employee knew or should have known that the disease may be related to the employment. The hearing officer found that the claimant knew or should have known that her injury may be related to her employment on or before _____, and concluded that that was the date of injury under Section 408.007. Although there is conflicting evidence on the issue of the date of injury, we conclude that the hearing officer's determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra.*

Section 409.001(a) provides that if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. The hearing officer found that the claimant did not report her claimed injury to the self-insured until November 12, 2001, which was more than 30 days after the date of the injury found by the hearing officer, and that good cause for failure to timely report the injury was not shown. The hearing officer concluded that the self-insured is relieved of liability under Section 409.002 because of the claimant's failure to timely report the claimed injury to the self-insured. The conflicting evidence on the notice issue was for the hearing officer to resolve. The hearing officer's determination on the notice issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra.*

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Edward Vilano
Appeals Judge

_____
Roy L. Warren
Appeals Judge